

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4303-01  
Bill No.: HB 1598  
Subject: Employees - Employers; State Employees  
Type: Original  
Date: March 24, 2010

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Bill Summary: Prohibits an employer from requiring a nonexempt state employee to take time off during any week the employee works more than an eight-hour workday or his or her regularly scheduled hours of work.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>
General Revenue	(\$850,000 to Unknown greater than \$990,000)	(\$850,000 to Unknown greater than \$990,000)	(\$850,000 to Unknown greater than \$990,000)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(\$850,000 to Unknown greater than \$990,000)</b>	<b>(\$850,000 to Unknown greater than \$990,000)</b>	<b>(\$850,000 to Unknown greater than \$990,000)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2011</b>	<b>FY 2012</b>	<b>FY 2013</b>
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 8 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

☐ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☐ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials at the **Office of Administration** assume restricting an employer from the ability to reduce overtime expenses by requiring employees use comp time will have an impact. Due to the number of variables involved, a fiscal impact is not provided.

Officials at the **Department of Agriculture, Department of Higher Education, Office of the State Treasurer, Office of the State Auditor, Department of Revenue, Missouri Gaming Commission, State Emergency Management Agency, Office of the State Courts Administrator, Budget and Planning, Department of Economic Development, Department of Health and Senior Services, Office of the State Public Defender, Department of Labor and Industrial Relations, Department of Natural Resources and the Department of Insurance, Financial Institutions and Professional Registration** assume that there is no fiscal impact from this proposal.

Officials at the **Department of Conservation (MDC)** this proposal would have fiscal impact on MDC funds if it requires nonexempt state employees not to adjust their work schedule within a work week in order to avoid the payment of overtime. The exact amount of impact is unknown, but could exceed \$100,000 annually.

Officials at the **Missouri Veterans Commission (MVC)** assume this proposal will increase MVC state and federal comp time liability by 25%-35%. MVC paid \$1.4 million in state and federal overtime last year.

Officials at the **Department of Mental Health (DMH)** assume overtime costs remain problematic for DMH facilities that provide direct care and services to clients, particularly in 24 hour/seven day facilities. The department must maintain adequate staffing levels at these facilities to meet certification and accreditation standards. Direct care staff are frequently required to remain on duty at the end of a shift until sufficient staff arrive to relieve them on the next shift. This "mandatory overtime" is the result of staff sick leave, late arrivals and difficulties in filling vacant positions. Adjusting employee work schedules is a important tool available to the department to manage overtime costs. This cost is unknown.

Officials at the **Missouri Department of Transportation (MoDOT)** assume in order to help manage overtime expenses in recent years, MoDOT has allowed divisions and districts the discretion to relieve employees from duty once they have reached 40 hours in the workweek. The number of hours flexed out by MoDOT employees has increased as a result. In FY08, 11

ASSUMPTION (continued)

percent of all potential overtime hours were flexed out within the workweek (by either employee choice or under direction from supervisor). In FY09, almost 28 percent of potential overtime hours were flexed out and through the first half of FY10, the number stands at 30 percent. Through the second quarter of FY10, the department has recorded over 260,000 hours of potential overtime, with approximately 80,000 hours of that overtime being flexed out (30 percent). This has reduced the department's overtime obligation to 180,000 hours rather than 260,000 hours. This has saved the department and the taxpayers of Missouri over \$1.3 million (based on an average salary of \$35,000 or \$16.83 per hour, which would be representative of an average salary paid to non-exempt employees) in six months or \$2.6 million potentially over the course of a full year; however, this estimate includes hours that are flexed out at the employee's choice. If we were to assume that half of the hours are flexed out at the direction of supervisors, then the proposed legislation could increase overtime costs to the department by approximately \$1.3 million a year.

Officials at the **Missouri Highway Patrol** assume in 2009, under current rules, Patrol employees accumulated approximately \$7.5 million worth of overtime. It is assumed that this legislation could increase this figure. However, there is no way to predict how many additional hours would be accumulated, because even though employers could no longer mandate that employees take the time off during the same week it is earned, employees could still choose to take the time off during that week before it posts to their comp time balances. If they voluntarily take the time off, this legislation would have no fiscal impact. We believe, though, it is likely that some employees will not choose to immediately take the time off and there will be at least somewhat of an increase. There is no way to estimate this figure which is why the Patrol assumes an unknown impact.

Officials at the **Department of Corrections (DOC)** assume that passage of this bill would have a significant fiscal impact DOC. DOC currently encourages employees required to work beyond their regular work shift to flex their standard work week to alleviate the state overtime balance. The Federal Labor Standard mandates that non-exempt employees who physically work over 40 hours per week be compensated at the premium rate of one and one-half times their regular pay rate. The FLSA does not mandate that a worker be compensated for hours worked beyond an eight-hour work day. Flexing time within the week so overtime doesn't accrue to the premium rate is in compliance with the Department of Labor. Prohibiting the DOC from flexing the time off within the given week it is earned will greatly increase the DOC's current overtime balance and subsequent outlay of general revenue funds. The resulting OT accrual would have to be paid off rather than managed as it currently is and although the future impact cannot be predicted, the possibility exists for a significant fiscal impact, potentially in the millions of dollars per year.

ASSUMPTION (continued)

Officials at the **Department of Social Services** assume currently, when an employee works over their regularly schedule hours during a workweek, supervisors are required to flex their work schedule so that overtime liability is not incurred. With supervisory responsibility to assign overtime off during the workweek, during FY 2009 DYS still accrued an overtime liability of \$1,440,245. The liability was due to employees being required to work: holidays, during staff shortages, in emergency situations, etc.

Conservatively estimating that employees would voluntarily take 65% of their accumulated compensatory time off, the Division assumes at least 35%, or an additional payment of \$504,086, would be required under this proposal. Flex time is not recorded in the SAMII payroll; therefore; it is not possible to specify a precise cost impact. Therefore, the fiscal impact of this proposal is unknown but over \$500,000.

Officials at the **Department of Elementary and Secondary Education** assume the proposal could result in zero costs or unknown costs depending upon the actions of employees. By not requiring the employee to take time off later in the week, the agency would have to accrue the compensatory time at time and one-half for the hours worked over 40 hours per week. Should the employee leave employment prior to using the accrued compensatory time, the agency would incur expense to pay off the accrued balance.

Officials at the **Office of the Attorney General** assume that any potential costs arising from this proposal can be absorbed with existing resources.

Officials from the **Office of the Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

**Oversight** assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

ASSUMPTION (continued)

**Oversight** assumes, pursuant to Section 105.935.7, RSMo, this section is applicable to employees who are employed in nonexempt positions providing direct client care or custody in facilities operating on a twenty-four-hour seven-day-a-week basis in the Department of Corrections, Department of Mental Health, Division of Youth Services of the Department of Social Services, and the Veterans Commission of the Department of Public Safety. Therefore, Oversight assumes no fiscal impact to all other state agencies.

<u>FISCAL IMPACT - State Government</u>	FY 2011 (10 Mo.)	FY 2012	FY 2013
<b>GENERAL REVENUE FUND</b>			
<u>Costs – Department of Corrections</u>			
Overtime costs	(Unknown)	(Unknown)	(Unknown)
<u>Costs – Department of Mental Health</u>			
Overtime costs	(Unknown)	(Unknown)	(Unknown)
<u>Costs – Department of Social Services</u>			
Overtime costs	(Unknown greater than \$500,000)	(Unknown greater than \$500,000)	(Unknown greater than \$500,000)
<u>Costs – Missouri Veterans Commission</u>			
Overtime costs	<u>(\$350,000 to \$490,000)</u>	<u>(\$350,000 to \$490,000)</u>	<u>(\$350,000 to \$490,000)</u>
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<u><b>(\$850,000 to Unknown greater than \$990,000)</b></u>	<u><b>(\$850,000 to Unknown greater than \$990,000)</b></u>	<u><b>(\$850,000 to Unknown greater than \$990,000)</b></u>

FISCAL IMPACT - Local Government

FY 2011  
(10 Mo.)

FY 2012

FY 2013

\$0

\$0

\$0

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This bill prohibits an employer from requiring a nonexempt state employee to take time off during any week the employee works more than an eight-hour workday or the employee's regularly assigned hours of work.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

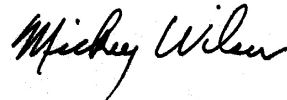
SOURCES OF INFORMATION

Department of Agriculture  
Department of Conservation  
Department of Higher Education  
Office of the Attorney General  
Office of the State Treasurer  
Office of the State Auditor  
Department of Revenue  
Missouri Veterans Commission  
Missouri Gaming Commission  
Office of the Secretary of State  
State Emergency Management Agency  
Office of the State Courts Administrator  
Budget and Planning  
Department of Mental Health  
Missouri Department of Transportation  
Office of Administration  
Missouri Highway Patrol  
Department of Economic Development  
Department of Health and Senior Services

JH:LR:OD

SOURCES OF INFORMATION (continued)

Office of the State Public Defender  
Department of Corrections  
Department of Social Services  
Department of Labor and Industrial Relations  
Department of Insurance, Financial Institutions and Professional Registration  
Department of Natural Resources

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA  
Director  
March 24, 2010